

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver of Heritage  
Community Bank,

Plaintiff,

v.

JOHN M. SAPHIR; PATRICK G.  
FANNING; STEPHEN L. FAYDASH;  
WILLIAM E. HETLER; THOMAS JELINEK;  
LORI A. MOSELEY; STEPHEN  
ANTHONY; JERRY C. BRUCER; JAMES  
K. CHAMPION; ANDREW B. NATHAN;  
and MARY C. MILLS,

Defendants.

Case No. 10-cv-07009

Judge Rebecca R. Pallmeyer

Magistrate Judge Arlander Keys

**JOINT MOTION TO DISMISS COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants James K. Champion and Stephen Anthony hereby move this Court to dismiss with prejudice the Complaint filed against them by the Federal Deposit Insurance Corporation (“FDIC”), acting as Receiver of Heritage Community Bank (the “Bank”), on the grounds that it fails to state a claim against them upon which relief can be granted. The FDIC’s Complaint against Defendants Champion and Anthony, who each served as an outside director of the Bank, should be dismissed for the following reasons:

1. As to Counts II and III, because the FDIC is barred from bringing negligence or breach of fiduciary duty claims against the Bank’s directors under the Illinois Banking Act, 205 ILCS § 5/39, and the Bank’s by-laws.

2. As to all counts, because the allegations of the Complaint treat the Bank's seven directors as a unit and fail to distinguish among the Bank's outside directors and inside directors, much less assert any allegations specifically against Defendants Champion or Anthony. Thus, the Complaint does not give Defendants Champion and Anthony fair notice of the claims against them as required by Federal Rule of Civil Procedure 8.
3. As to all counts, because the allegations of the Complaint do not rebut the presumption of the business judgment rule that Defendants Champion and Anthony acted in good faith and with due care as directors and fail to plead claims for negligence, gross negligence, or breach of fiduciary duty.
4. As to all counts, because the Complaint fails to allege that the decisions of Defendants Champion and Anthony were the proximate cause of any injury to the Bank.

Defendants Champion and Anthony submit the accompanying memorandum of law in further support of their motion to dismiss. In addition, as set forth in the accompanying memorandum of law, Defendants Champion and Anthony join and incorporate by reference the relevant portions of Defendant John M. Saphir's Motion to Dismiss the FDIC's Complaint and Memorandum in Support (Docket Nos. 61 & 69): (a) the Factual Background section; (b) Section I of the Argument; (c) Section II of the Argument; and (d) Section III of the Argument.

WHEREFORE, Defendants, James K. Champion and Stephen Anthony, respectfully request that the court grant their motion to dismiss, enter an order

dismissing the FDIC's Complaint with prejudice, and grant such other relief as the court deems just and appropriate.

Dated: January 24, 2011

Respectfully submitted,

/s/ Aaron H. Stanton

Aaron H. Stanton (IL Bar No. 6244251)  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash  
22nd Floor  
Chicago, IL 60611  
Telephone: (312) 840-7078  
Facsimile: (312) 840-7900

*Counsel for Defendant Stephen Anthony*

/s/ Sigal P. Mandelker

Sigal P. Mandelker (*pro hac vice*)  
Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036  
Telephone: (212) 969-3360  
Facsimile: (212) 969-2900

- and -

Steven R. Gilford (IL Bar No. 3121730)  
Catherine J. Spector (IL Bar No. 6287459)  
Proskauer Rose LLP  
Three First National Plaza  
70 W. Madison St., Ste. 3800  
Chicago, IL 60606  
Telephone: (312) 962-3550  
Facsimile: (312) 962-3551

*Counsel for Defendant James K.  
Champion*

**CERTIFICATE OF SERVICE**

I, Sigal P. Mandelker, do hereby certify that I have caused a true and correct copy of the foregoing to be served to the following attorneys, today January 24, 2011, by operation of the Court's CM/ECF electronic filing system:

Susan Valentine  
Robinson Curley & Clayton, P.C.  
300 South Wacker Drive, Suite 1700  
Chicago, IL 60606  
312 663-3100  
[svalentine@robinsoncurley.com](mailto:svalentine@robinsoncurley.com)  
*Attorneys for Federal Deposit Insurance Corporation, as Receiver of Heritage Community Bank*

Thomas G. Gardiner  
Gardiner Koch Weisberg & Wrona  
53 West Jackson Boulevard, Suite 950  
Chicago, IL 60604  
(312) 362-0000  
[tgardiner@gkw-law.com](mailto:tgardiner@gkw-law.com)  
*Attorneys for Stephen L. Faydash*

Lawrence A. Stein  
Huck Bouma PC  
1755 South Naperville Road  
Wheaton, IL 60187-8132  
(630) 221-1755  
Fax: (630) 221-1756  
[lstein@huckbouma.com](mailto:lstein@huckbouma.com)  
*Attorneys for Thomas Jelinek*

Aaron H. Stanton  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash, 22nd Floor  
Chicago, IL 60611  
Telephone: (312) 840-7078  
Facsimile: (312) 840-7900  
[astanton@burkelaw.com](mailto:astanton@burkelaw.com)  
*Attorneys for Stephen Anthony*

John M. George  
Nancy Anne Temple  
Katten & Temple LLC  
542 South Dearborn Street, #1060  
Chicago, IL 60603  
(312) 663-0800  
[jgeorge@kattentemple.com](mailto:jgeorge@kattentemple.com)  
[ntemple@kattentemplelaw.com](mailto:ntemple@kattentemplelaw.com)  
*Attorneys for John M. Saphir*

John J. Duffy  
Donohue, Brown, Mathewson & Smyth  
140 South Dearborn Street, Suite 700  
Chicago, IL 60603  
(312) 422-0900  
[john.duffy@dbmslaw.com](mailto:john.duffy@dbmslaw.com)  
*Attorneys for Patrick G. Fanning*

Matthew F Tibble  
Pretzel & Stouffer, Chtd.  
One South Wacker Drive, Suite 2500  
Chicago, IL 60606-4673  
(312) 346-1973  
[mtibble@pretzel-stouffer.com](mailto:mtibble@pretzel-stouffer.com)  
*Attorneys for William E. Hetler*

Anne M Abrell  
Casale, Woodward & Buls, LLP  
9223 Broadway, Suite A  
Merrillville, IN 46410  
(219) 736-9990  
[aabrell@cwb lawfirm.com](mailto:aabrell@cwb lawfirm.com)  
*Attorneys for Lori A. Moseley*

William D. Dallas  
Regas, Frezados, Harp & Dallas  
111 West Washington Street, Suite 1525  
Chicago, IL 60602  
(312) 236-4400  
wdd@rfd-law.com  
*Attorneys for Jerry C. Brucer*

Brian Kevin McBrearty  
McBrearty, Hart & Kelly  
222 South Central Avenue, Suite 200  
St. Louis, MO 63105  
(314) 725-1227  
mcbrearty@mcbreartylaw.com  
*Attorneys for Mary C. Mills*

William Scott Porterfield  
Sarah B. Waxman  
Barack Ferrazzano Kirschbaum &  
Nagelberg LLP  
200 W. Madison Street, Suite 3900  
Chicago, IL 60606  
(312) 984-3100  
Fax: (312) 984-3150  
scott.porterfield@bfkn.com  
sarah.waxman@bfkn.com  
*Attorneys for Andrew B. Nathan*

By: /s/ *Sigal P. Mandelker*  
Sigal P. Mandelker